

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CONQUEST INNOVATIONS, LLC,

Plaintiff,

v.

THE SKYLIFE COMPANY, INC.,

Defendant.

CASE NO. C15-5697 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S PETITION
FOR FEES AND COSTS

This matter comes before the Court on Defendant The SkyLIFE Company, Inc.'s ("SkyLife") petition for fees (Dkt. 50). The Court has considered the pleadings filed in support of and in opposition to the petition and the remainder of the file and hereby rules as follows:

I. PROCEDURAL HISTORY

On September 28, 2015, Plaintiff Conquest Innovations, LLC ("Conquest") filed a complaint against SkyLIFE asserting causes of action for infringement of U.S. Patent No. 7,167,827 (the "827 Patent"), breach of mutual nondisclosure agreement, and unfair competition. Dkt. 1. On November 23, 2015, SkyLIFE filed a motion to dismiss. Dkt.

1 21. On January 26, 2016, the Court stayed the matter pending a reexamination of the
2 ‘827 Patent. Dkt. 33.

3 On September 27, 2016, Conquest filed a notice informing the Court that all
4 claims in the ‘827 Patent had been cancelled and that it was voluntarily dismissing its
5 complaint. Dkt. 36. Although SkyLIFE opposed the voluntary dismissal, the Court
6 granted the motion. Dkt. 40.

7 On November 9, 2016, SkyLIFE moved for attorney fees and costs. Dkt. 41. On
8 January 26, 2017, the Court granted the motion in part, denied it in part, and requested a
9 revised petition for fees. Dkt. 49. On January 26, 2017, SkyLife filed the instant motion.
10 Dkt. 50. On February 13, 2017, Conquest responded and presented new argument and
11 authority in opposition to any award. Dkt. 52. On February 16, 2017, SkyLife replied.
12 Dkt. 54.

13 II. DISCUSSION

14 “The court in exceptional cases may award reasonable attorney fees to the
15 prevailing party.” 35 U.S.C. § 285. SkyLife cites, for the first time, that “[w]hen an
16 action embraces both patent and non-patent claims, no fees under section 285 can be
17 awarded for time incurred in litigation of the non-patent issues.” *Gjerlov v. Schuyler*
18 *Labs., Inc.*, 131 F.3d 1016, 1025 (Fed. Cir. 1997) (quoting *Machinery Corp. of Am. v.*
19 *Gullfiber AB*, 774 F.2d 467, 475 (Fed.Cir. 1985)).

20 In this case, the Court concluded that Conquest’s entire case was suspect and
21 extraordinarily weak, rendering this as an exception case warranting an award of attorney
22 fees. Conquest, however, has cited authority that, under § 285, SkyLife may not be

1 awarded fees and costs for Conquest's frivolous contract claim. *Gjerlov*, 131 F.3d at
2 1025. Upon review of SkyLife's billing records, the Court finds that the record does not
3 reflect a separate accounting for SkyLife's fees between Conquest's patent related claims
4 and contract claim. Despite the failure to separate the work, Conquest concedes that
5 \$30,482.02 is an appropriate award. Dkt. 52 at 9. The Court agrees and will award this
6 amount.

7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that SkyLife's petition for fees (Dkt. 50) is
9 **GRANTED in part** and **DENIED in part**, SkyLife is awarded \$30,482.02 in fees and
10 costs, and the Clerk shall enter **JUDGMENT** against Conquest for this amount.

11 Dated this 27th day of March, 2017.

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14 **BENJAMIN H. SETTLE**
United States District Judge